



(Billing Code 5001-06-P)

**DEPARTMENT OF DEFENSE**

**Defense Acquisition Regulations System**

**48 CFR Part 204**

**RIN 0750-AH71**

**Defense Federal Acquisition Regulation Supplement: Contingency  
Contract Closeout (DFARS Case 2012-D014)**

**AGENCY:** Defense Acquisition Regulations System, Department of Defense (DoD).

**ACTION:** Final rule.

**SUMMARY:** DoD is issuing a final rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to require additional planning, monitoring, and executing activities for contract closeouts when the contracts are awarded for performance in contingency areas.

**DATES:** Effective Date: [Insert date of publication in the Federal Register]

**FOR FURTHER INFORMATION CONTACT:** Meredith Murphy, telephone 571-372-6098.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

DoD is amending the Defense Federal Acquisition Regulation Supplement (DFARS) to implement a recommendation made by the Government Accountability Office (GAO) report 11-891,

"CONTINGENCY CONTRACTING: Improved Planning and Management Oversight Needed to Address Challenges with Closing Contracts," dated August 23, 2011. The GAO recommended that DoD improve contract closeouts when the contracts are awarded for performance in contingency areas. The GAO recommended revising contract guidance to enhance advance planning for contingency contract closeouts. Additionally, the GAO advocated including a requirement that senior contracting officials monitor and assess the progress of contract closeout activities throughout the contingency operation.

The DFARS is amended at 204.804 to implement key elements proposed by the GAO. The head of the contracting activity is required to assign the highest priority to contracts performed in a contingency area in order to reduce potential backlogs. Heads of contracting activities are responsible for supervising the progress of contingency contract closeout activities and taking appropriate steps if a backlog occurs.

## **II. Publication of this final rule for public comment is not required by statute**

"Publication of proposed regulations," 41 U.S.C. 1707, is the statute which applies to the publication of the Federal Acquisition Regulation. Paragraph (a)(1) of the statute requires that a procurement policy, regulation, procedure, or form (including an amendment or modification thereof) must be

published for public comment if it relates to the expenditure of appropriated funds, and has either a significant effect beyond the internal operating procedures of the agency issuing the policy, regulation, procedure, or form, or has a significant cost or administrative impact on contractors or offerors. This final rule is not required to be published for public comment because this amendment does not relate to the expenditure of appropriated funds, and has neither a significant effect beyond the internal operating procedures of DoD, or a significant cost or administrative impact on contractors or offerors. These requirements affect only the internal operating procedures of the Government.

### **III. Executive Orders 12866 and 13563**

Executive Orders (E.O.s) 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This is not a significant regulatory action and, therefore, was not subject to review under section 6(b) of E.O. 12866, Regulatory Planning and Review, dated

September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

#### **IV. Regulatory Flexibility Act**

The Regulatory Flexibility Act does not apply to this rule because this final rule does not constitute a significant DFARS revision within the meaning of FAR 1.501-1 and 41 U.S.C. 1707 does not require publication for public comment.

#### **V. Paperwork Reduction Act**

The rule does not contain any information collection requirements that require the approval of the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. chapter 35).

#### **List of Subjects in 48 CFR Part 204**

Government procurement.

**Ynette R. Shelkin**

Editor, Defense Acquisition Regulations System.

Therefore, 48 CFR part 204 is amended to read as follows:

#### **PART 204—ADMINISTRATIVE MATTERS**

1. The authority citation for 48 CFR part 204 continues to read as follows:

**Authority:** 41 U.S.C. 1303 and CFR chapter 1.

2. Section 204.804 is revised to read as follows:

**204.804 Closeout of contract files.**

(1) Contracting officers shall close out contracts in accordance with the procedures at PGI 204.804. The closeout date for file purposes shall be determined and documented by the procuring contracting officer.

(2) The head of the contracting activity shall assign the highest priority to closeout of contracts awarded for performance in a contingency area. Heads of contracting activities must monitor and assess on a regular basis the progress of contingency contract closeout activities and take appropriate steps if a backlog occurs. For guidance on the planning and execution of closing out such contracts, see PGI 207.105(b)(20)(C)(8) and PGI 225.7404(e).